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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,750	07/31/2001	Harry J. Buncke	447RE	7589
24239 7590 01/07/2009 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709				
EXAMINER				
MENDOZA, MICHAEL G				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
01/07/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

09/919,750

**Applicant(s)**

BUNCKE, HARRY J.

**Examiner**

MICHAEL G. MENDOZA

**Art Unit**

3734

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 6/23/2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26, 60-65 and 74-105 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8, 18, 21-26, 60, 61 and 85-105 is/are allowed.
- 6) ☒ Claim(s) 9-17, 19, 20, 63-65, 74-84 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/3508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 6/23/2006 have been fully considered but they are not persuasive.
2. As to the argument concerning claim 16, the claim does not give any method steps for performing a facelift. The requirements of the claim indicate that the method need only be performed in tissue under the skin. The recitation of "as needed for the particular facelift operation" has not been given patentable since it is not an actual step. Nor has the recitation of "a patient in a facelift operation" since it is in the preamble and is not an actual step.
3. In response to applicant's arguments, the recitation a facelift operation has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).
4. Applicant's arguments, see pg. 2, paragraph 1, filed 6/23/2006, with respect to claim 85 have been fully considered and are persuasive. The rejection of claim 85 has been withdrawn.
5. Claims 1-26, 60-65, and 74-105 are pending.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 16, 17, 74 and 75 are rejected under 35 U.S.C. 102(b) as being anticipated by McKenzie publication "An experiment Multiple Barbed Suture For The Flexor Tendons Of The Palm And Fingers" (McKenzie).
8. Claims 74 and 75, McKenzie publication teaches a method for holding together two tissue portions wherein the portions are sewn with barb sutures as recited in the claim. The page labeled 445, figure 10 clearly discloses the method steps as recited. Page 442, figure 3 shows where the suture has been severed.
9. Concerning claim 16 and 17, there is nothing in the body of the claim that limits the recitation to a facelift procedure. A path is always selected before suturing begins and a needle is passed through the tissue. McKenzie teaches all of the other method steps.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 9-15, 19, 20, 63-65, 76-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie publication "An experiment Multiple Barbed Suture For The Flexor Tendons Of The Palm And Fingers" (McKenzie).

12. The McKenzie publication teaches a method for holding together two tissue portions wherein the portions are sewn with barb sutures as recited in the claim. The page labeled 445, figure 10 clearly discloses the method steps as recited. Page 442, figure 3 shows where the suture has been severed. It should be noted that McKenzie fails to disclose the use of a suture with a diameter range of 100-500 microns with barbs of 30-100 microns. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use sutures with the claimed range limitations, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

13. As to claims 10-17, 19-20, 63-65, and 76-84 are unpatentable over McKenzie. Concerning claim 10 it is well known in the to provide suture-needle combinations having pullout characteristics. The USPTO classification system class/subclass (606/227) has many patents with this feature. It would have been obvious at the time of applicant's invention to form McKenzie's with a pull out suture-needle combination. Concerning claims directed to the barbs layout, such recitation does not affect the method steps in this instance and such modification would have been obvious to one having ordinary skill in the art.

***Allowable Subject Matter***

14. Claims 1-8, 18, 21-26, 60, 61, and 85-105 are allowable over the prior art of record.

***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. MENDOZA whose telephone number is (571)272-4698. The examiner can normally be reached on Mon.-Fri. 9:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. G. M./  
Examiner, Art Unit 3734

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731